

UNITED STATES DISTRICT COURT
DISTRICT OF TEXAS OF NEW MEXICO

ESTEBAN ALFARO-HUITORN,
ELEAZAR GARCIA-MATA,
JOSE ANTONIO GARCIA-MATA,
JUAN GUZMAN, JOSE GERARDO JASSO,
RAUL JASSO-CERDA, ISMAEL MARTINEZ
GONZALEZ, ENRIQUE ROJAS-TORRES,
LAZARO ROJAS-TORRES,
TRINIDAD SANTOYO-GARCIA
PEDRO TAMEZ, ANGELA TREJO,
EFRAIN TREJO, SANTOS TREJO,
and YANETH TREJO,

No. 2-15-210 CG/WPL

Plaintiffs,

v.

WKI OUTSOURCING SOLUTIONS, LLC,
JAIME CAMPOS, CERVANTES AGRIBUSINESS,
CERVANTES ENTERPRISES, INC.,
RJF FARMS, INC., RONNIE J. FRANZOY,
TIERRA DE DIOS FARMS, LLC,
LACK FARMS, INC. and SKYLINE PRODUCE, LLC

Defendants.

**ANSWER TO PLAINTIFFS' AMENDED COMPLAINT FOR DEFENDANTS
CERVANTES AGRIBUSINESS AND CERVANTES ENTERPRISES, INC.**

COME NOW Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc., by and through their counsel of record, Joseph Cervantes, and for this answer to Plaintiffs' Amended Complaint, state:

1. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge sufficient to form a belief as to paragraphs 1, 2, 3, 4, 5 and 6 of Plaintiffs' Amended Complaint.

2. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny paragraph 7 of Plaintiffs' Amended Complaint.

3. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. admit paragraph 8 of Plaintiffs' Amended Complaint.

4. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge sufficient to form a belief as to paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Plaintiffs' Amended Complaint.

5. In response to paragraph 28 of Plaintiffs' Amended Complaint, Defendant Cervantes Enterprises, Inc. admits it is an established Southern New Mexico business, has operated for over a decade, and has permanent employees. Defendant Cervantes Agribusiness was a dba for Emma Jean Cervantes, deceased, and is now managed and owned by her estate. Defendants Cervantes Enterprises, Inc. and Cervantes Agribusiness are otherwise without knowledge as to the remaining allegations in paragraph 28 and regarding all other Defendants.

6. In response to paragraphs 29, 30, 31, 32, 33 and 34 of Plaintiffs' Amended Complaint, Defendants Cervantes Enterprises, Inc. and Cervantes Agribusiness deny the allegations therein as to these Defendants. Cervantes Enterprises, Inc. and Cervantes Agribusiness are without knowledge as to the other Defendants.

7. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge as to the allegations in paragraphs 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 of Plaintiffs' Amended Complaint.

8. In response to paragraph 45 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. admit Dino Cervantes was the general

manager of both Cervantes Enterprises, Inc. and Cervantes Agribusiness, and deny that Dino Cervantes “undertook all actions alleged below as ‘Cervantes’ for CEI, CAB, or both.”

9. In response to paragraph 46 of Plaintiffs’ Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. admit that their manager Dino Cervantes met with Jaime Campos to discuss WKI’s services, and deny there was a discussion of WKI’s “business plan” which is described.

10. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge as to the allegations in paragraph 47 of Plaintiffs’ Amended Complaint.

11. In response to paragraph 48 of Plaintiffs’ Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. admit that on or about September 10, 2011, Dino Cervantes and Jaime Campos signed attached Exhibit 2, a WKI contract entitled “Agreement of Outsourcing Support”. As for the remaining allegations in paragraph 48 Defendants state that the contract speaks for itself.

12. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge sufficient to form a belief as to paragraphs 49, 50 and 51 of Plaintiffs’ Amended Complaint.

13. In response to paragraph 52 of Plaintiffs’ Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations therein as to these Defendants, and are without knowledge sufficient to form a belief as to all other Defendants.

14. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge sufficient to form a belief as to paragraphs 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64 of Plaintiffs’ Amended Complaint.

15. In response to paragraph 65 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations therein as to these Defendants, and are without knowledge as to all other Defendants.

16. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge sufficient to form a belief as to paragraphs 66, 67, 68, 69, 70 and 71 of Plaintiffs' Amended Complaint.

17. In response to paragraph 72 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny a contract of employment existed with Plaintiffs as to these Defendants, and are without knowledge as to all other Defendants.

18. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge as to paragraph 73 of Plaintiffs' Amended Complaint, and are without knowledge as to all other Defendants.

19. In response to paragraph 74 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny they offered jobs and higher wages to Plaintiffs as alleged, and are without knowledge sufficient to form a belief as to all other Defendants.

20. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge sufficient to form a belief as to paragraphs 75, 76, 77, 78, 79 and 80 of Plaintiffs' Amended Complaint.

21. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny paragraphs 81, 82 and 83 of Plaintiffs' Amended Complaint, and are without knowledge sufficient to form a belief as to all other Defendants.

22. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge sufficient to form a belief as to paragraphs 84, 85, 86, 87, 88 and 89 of Plaintiffs' Amended Complaint.

23. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny they breached an employment contract or offered Plaintiffs jobs as alleged in paragraph 90 of Plaintiffs' Amended Complaint, and are without knowledge as to the remaining allegations and without knowledge sufficient to form a belief as to all other Defendants.

24. In response to paragraphs 91 and 92 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny paragraphs 91 and 92 therein as to these Defendants, and are without knowledge as to all other Defendants.

25. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge sufficient to form a belief as to paragraphs 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134 and 135 of Plaintiffs' Amended Complaint.

26. In response to paragraph 136 of Plaintiffs' Amended Complaint, Cervantes Agribusiness and Cervantes Enterprises, Inc. deny each and every allegation not specifically and expressly admitted to herein.

27. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge sufficient to form a belief as to paragraphs 137, 138, 139, 140 and 141 of Plaintiffs' Amended Complaint.

28. In response to paragraphs 142, 143, 144, and 145 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations therein as to these Defendants, and are without knowledge as to all other Defendants.

29. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge sufficient to form a belief as to paragraphs 146, 147, 148 and 149 of Plaintiffs' Amended Complaint.

30. In response to paragraphs 150, 151 and 152 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations therein as to these Defendants, and are without knowledge as to all other Defendants.

31. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations in paragraphs 153, 154, and 155 of Plaintiffs' Amended Complaint.

32. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny WKI acted as agent for Cervantes Agribusiness and Cervantes Enterprises, Inc. as alleged in paragraph 156 of Plaintiffs' Amended Complaint, and are without knowledge sufficient to form a belief as to all other Defendants.

33. In response to paragraphs 157 and 158 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny an employment contract with Plaintiffs existed or was breached as to these Defendants, and are without knowledge as to all other Defendants.

34. In response to paragraph 159 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. admit Cervantes Agribusiness entered a

contract with WKI, deny Cervantes Enterprises, Inc. entered a contract with WKI, and are without knowledge sufficient to form a belief as to the other Defendants.

35. In response to paragraph 160 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations therein as to these Defendants, and are without knowledge as to all other Defendants.

36. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny they breached a contract with WKI as alleged in paragraph 161 of Plaintiffs' Amended Complaint, and are without knowledge sufficient to form a belief as to all other Defendants.

37. In response to paragraphs 162 and 163 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations therein as to these Defendants, and are without knowledge as to all other Defendants.

38. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge as to the truth of the matters alleged in paragraphs 164, 165, 166, 167, 168, 169, 170 and 171 of Plaintiffs' Amended Complaint.

39. In response to paragraphs 172, 173, 174 and 175 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations therein as to these Defendants, and are without knowledge as to all other Defendants.

40. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. are without knowledge sufficient to form a belief as to the allegations in paragraph 176 of Plaintiffs' Amended Complaint.

41. In response to paragraphs 177 and 178 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations as to these Defendants, and are without knowledge sufficient to form a belief as to other Defendants.

42. In response to paragraph 179 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations therein as to these Defendants, and are without knowledge as to all other Defendants.

43. In response to paragraph 180 of Plaintiffs' Amended Complaint Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny they had an employment agreement with Plaintiffs, and are without knowledge sufficient to form a belief as to all other Defendants.

44. In response to paragraph 181 of Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations therein as to these Defendants, and are without knowledge as to all other Defendants.

45. Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. deny the allegations in paragraphs 182, 183, 184, 185, 186, 187, 188, 189, 190 and 191 of Plaintiffs' Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

As a further, separate and alternative defense, Plaintiffs are barred from recovery in whole or in part to the extent Plaintiffs have failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

As a further, separate and alternative defense, Plaintiffs are barred from recovery in whole or in part due to the comparative negligence of others.

THIRD AFFIRMATIVE DEFENSE

As a further, separate and alternative defense, Plaintiffs have failed to allege or plead any special damage/basis for recovery of punitive damages and that Plaintiff's claims for punitive damages, in the absence of a reasonable relationship to actual damages, violates the due process clauses of the U.S. Constitution and Article II §18 of the N.M. Constitution.

FOURTH AFFIRMATIVE DEFENSE

As a further, separate and alternative defense, Plaintiffs are barred from recovery in whole or in part by the doctrine of at-will employment or termination of employment.

FIFTH AFFIRMATIVE DEFENSE

As a further, separate and alternative defense, Plaintiffs are barred from recovery in whole or in part by the doctrines of release, waiver, and/or novation.

WHEREFORE, having now answered Plaintiffs' Amended Complaint, Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. request that this Court dismiss Plaintiffs' claims with prejudice, or in the alternative that the Court enter a judgment denying Plaintiffs' requested relief, and granting Defendants Cervantes Agribusiness and Cervantes Enterprises, Inc. their costs, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

Cervantes Law Firm, P.C.
2610 S. Espina
Las Cruces, NM 88001
(575) 526-5600; Fax (575) 523-9317
joseph@cervanteslawnm.com

/s/ Joseph Cervantes
Joseph Cervantes

CERTIFICATE OF SERVICE

I hereby certify that on the May 4, 2015, I electronically filed the foregoing document using the Court's CM/ECF system, which provides notice and service of these documents to all attorneys of record in this civil action.

Jerome Wesevich
Christopher Benoit
Texas Rio Grande Legal Aid, Inc.
1331 Texas Ave.
El Paso, TX 79901
(915) 585-5100; Fax (915) 544-3789
Jwesevich@trla.org
Cbenoit@trla.org

Gilbert L. Sanchez
Charles C. High Jr.
Kemp Smith LLP
P.O. Box 2800
El Paso, TX 79999-2800
Gisa@kempsmith.com
Chigh@kempsmith.com

Edward Hernandez III
Casey B. Fitch
Holt Mynatt Martinez P.C.
P.O. Box 2699
Las Cruces, NM 88004-2699
EH@hmm-law.com
CBF@hmm-law.com

Jaime Campos
128 Tierra Vista Dr.
Santa Teresa, NM 88008
jaimecampos@msn.com

/s/ Joseph Cervantes
Joseph Cervantes